

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-CR-205-H

No. 5:13-CV-614-H

DWAN MARQUIS WILLIAMS,)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

The court referred this matter to United States Magistrate Judge Kimberly A. Swank for review of the government's motion to dismiss petitioner's motion to vacate sentence pursuant to 18 U.S.C. § 2255. After conducting a hearing on this matter October 11, 2014, Magistrate Judge Swank filed a Memorandum and Recommendation ("M&R") recommending the government's motion to dismiss be granted and petitioner's motion to vacate be denied. [D.E. #131 at 10]. Defendant filed timely objections to the M&R on December 15, 2014. [D.E. #134].

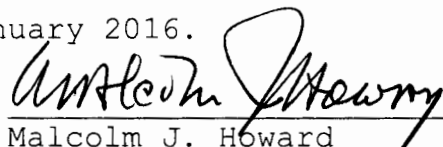
The court has carefully reviewed the M&R, objections, and other documents of record. Based on its de novo review, see 28 U.S.C. § 636(b) (After conducting a de novo review, the district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge..."), the court finds that the recommendation of Magistrate Judge

Swank is, in all respects, in accordance with the law and should be approved.

Accordingly, the court ACCEPTS the recommendation of Magistrate Judge Swank. The government's motion to dismiss, [D.E. #106], is GRANTED, and petitioner's motion to vacate pursuant to 18 U.S.C. § 2255, [D.E. #97], is DENIED.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this Court's dismissal of petitioner's § 2255 motion debatable. Therefore, a certificate of appealability is DENIED.

This 25th day of January 2016.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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